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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,919	04/30/2001	Sadao Nishibori	DED-3170-3	9911
7590 David E. Dougherty DENISON, SCHULTZ, DOUGHERTY & MacDonald 1727 King Street, Suite 105 Alexandria, VA 22314			EXAMINER COLE, ELIZABETH M	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 12/14/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/843,919

Applicant(s)

NISHIBORI ET AL.

Examiner

Elizabeth M. Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5, 10, 13, 15, 22, 26, 27, 31, 34, 38, 39, 43, 44, 48-51, 57 and 61-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 10, 13, 15, 22, 26, 27, 31, 34, 38, 39, 43, 44, 48-51, 57 and 61-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. Claims 1, 5, 10, 13, 15, 22, 26-27, 31, 34, 38-39, 43-44, 48-51, 57, 61-63 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification as originally filed does not recite that the filament made of the polyolefin resin and vinyl acetate, ethylene vinyl acetate copolymer or styrene butadiene styrene are "single component" fibers. The filaments are required to have two components, therefore, the specification does not provide support for the invention as now claimed.

2. Claims 1, 5, 10, 13, 15, 22, 26-27, 31, 34, 38-39, 43-44, 48-51, 57, 61-63 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Where applicant acts as his or her own lexicographer to specifically define a term of a claim contrary to its ordinary meaning, the written description must clearly redefine the claim term and set forth the uncommon definition so as to put one reasonably skilled in the art on notice that the applicant intended to so redefine that claim term. *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999). The term "single component filaments" in claims 1 and 63 is used by the claim to mean "a filament comprising two polymers", while the accepted meaning is "a filament comprising a single polymer." The term is indefinite because the specification does not clearly redefine the term. Filaments which comprise

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two or more polymers are generally known as bi-constituent or multi-fibers in the art. More specific terms can also be used such as bicomponent, sheath/core, conjugate, side-by-side, etc., depending on the geometric configuration of the fibers. However, the art would not recognize the term "single component" as referring to a fiber which was made up of multiple polymeric components, regardless of the geometric configuration of the fibers, (i.e., a blend versus, sheath/core, etc.). For purposes of the art rejection below, the term "single component" will be interpreted as a fiber which is a blend of two polymers, rather than a fiber which has a particular geometric configuration, (i.e., sheath/core, side-by-side, etc.), since this is believed to be what Applicant intends to convey by this limitation.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 5, 13, 15, 22, 26-27, 31, 34, 38-39, 43-44, 48, 57, 61-63 rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al, U.S. Patent No.

5,972,463 in view of Kargol et al, U.S. patent No. 5,492,662 for the reasons set forth in the previous action, and further in view of Hazelton et al, U.S. Patent No. 4,804,577.

With regard to the newly amended claims, Martin et al differs from the claimed invention because Martin employs fibers which have a sheath/core or side-by-side configuration, while the instant claims recite a "single component" structure, which is interpreted as a blend of polymers. Hazelton et al teaches that nonwoven fabrics with improved

extensibility, texture and hand can be formed by employing fibers which are a blend of a polymer such as a polyolefin or a styrene butadiene styrene with another polymer such as a vinyl acetate polymer. See abstract and col. 2, line 45 – col. 3, line 51. Therefore, it would have been obvious to have employed fibers having a blended structure as the multi constituent fibers of Martin, motivated by the teaching of Hazelton, that using the blended fibers improved the extensibility, texture and hand of the resulting fabric.

5. Claims 7, 10, 49-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al in view of Kargol and Hazelton as applied to claims above, and further in view of Insley et al, U.S. Patent No. 5,451,437 as set forth in the previous action.

6. Applicant's arguments filed 10/31/07 have been fully considered but they are not persuasive. Applicant's arguments regarding the structure of the fibers of Martin, (i.e., sheath/core versus "single component"), have been considered but are moot in view of the new grounds of rejection.

7. Applicant argues that the examiner must show why the person of ordinary skill would use hollow fibers when Martin only states that they can be used at one place in the reference. However, since Martin clearly teaches employing either hollow or solid fibers, Martin anticipates both hollow or solid fibers.

8. Applicant argues that Martin is directed to floor mats and abrasive articles and that to change the density as taught by Kargol would be a drawback to the material of Martin. However, Martin already teaches embossing the structure, which creates an increase in bulk density. See figure 24 and column 20, lines 35-62. Also, it is noted that the material of Martin can also be used as a cushioning web, (col. 7, line 1).

9. Applicant argues that in Kargol, the web is coated but in Martin the web is not coated. However, the claims neither require nor preclude coating. Further, In response to applicant's argument that Kargol's web is coated while Martin's is not, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Also, it is noted that both coated and uncoated webs can be made to have varying densities, as shown in the cited references.

10. Applicant argues that even if the styrene butadiene styrene of Insley is used, the claimed filament cannot result since Martin employs a two component system. However, this argument is moot in view of the new grounds of rejection. Further, as noted above, Applicant's terminology renders the claim vague and indefinite since the instant claims require more than one component in each fiber.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.

/Elizabeth M. Cole/
Primary Examiner, Art Unit 1794

e.m.c